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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 477

GRACE E. SMART, PETITIONER

v.

TIGHE E. WOODS, HOUSING EXPEDITER, AND RALPH D. JANNEY, AREA RENT DIRECTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 14) is not reported. The opinion of the court of appeals (R. 24-25) is reported at 184 F. 2d 714.

JURISDICTION

The judgment of the court of appeals was entered on October 27, 1950 (R. 23) and the petition for a writ of certiorari was filed on January 2, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below properly held that the United States District Court for the Southern District of Ohio was without jurisdiction over the

person of respondent Woods, Housing Expediter, whose official residence is in Washington, D. C., in a suit against him for injunctive relief, no personal service of the summons having been made upon the said respondent.

STATUTE INVOLVED

The pertinent provisions of the statute involved are set forth in the Appendix, *infra,* p. 9.

STATEMENT

Petitioner is the owner of housing accommodations in Cincinnati, Ohio. Petitioner brought this suit against respondent Tighe E. Woods, Housing Expediter, and Ralph D. Janney, Area Rent Director, in the Common Pleas Court for Hamilton County, Ohio, claiming that respondent, Woods, in administrative proceedings before him, failed to pass upon the questions whether her accommodations were decontrolled under the Housing and Rent Act of 1947, as amended, or whether she was receiving an adequate return on her investment. In addition, petitioner alleged that respondent Woods had disregarded a district court ruling that the Act was invalid.[1] As relief, petitioner prayed for an injunction restraining respondents from enforcing an order which had established a maximum rent for the second floor apartment of her housing accommodations described in her petition. (R. 1-4.)

[1] *United States* v. *Shoreline Cooperative Apartments,* 84 F. Supp. 660 (N.D. Ill.), subsequently reversed by this Court, 338 U. S. 897.

No personal service of summons was made upon respondent Tighe E. Woods, Housing Expediter. The original summons in the Common Pleas Court was issued October 15, 1949, and requested service upon respondents Tighe E. Woods and Ralph D. Janney, Area Rent Director (R. 5). The return, dated October 17, 1949, reported that personal service had been made upon respondent Janney, Area Rent Director, and that the other defendant (Woods) could not be found in the county. An alias summons for respondent Woods was issued October 24, 1949, and the return thereon made the next day (R. 6). This return reported that service had been made upon respondent Woods by leaving a copy of the summons with respondent Janney in the Cincinnati Rent Office (R. 6).

Thereafter, the action was removed to the United States District Court for the Southern District of Ohio, Western Division, by respondent Janney. In that court, respondent Woods, Housing Expediter, filed a special appearance for the purpose only of objecting to the jurisdiction of the district court over his person and moved that the action be dismissed as to him upon the ground that he could not be sued in the jurisdiction of Ohio, and upon the further ground that no service of process had been made sufficient to confer jurisdiction of the court upon him (R. 12-13). Respondent Janney moved to dismiss the complaint upon the ground that the Housing Expediter was

an indispensable party to the action, and that since the official residence of the Housing Expediter was in Washington, D. C., and no service had been or could be obtained upon him, he might not be sued in the United States District Court for the Southern District of Ohio (R. 7). The district court granted both motions to dismiss upon the grounds that respondent Woods might not be sued in that jurisdiction; that there had been no service of process upon him sufficient to confer jurisdiction of the trial court over him; and that respondent Woods, as Housing Expediter, was an indispensable party-defendant to the action (R. 14).

On appeal the court below affirmed the judgment of the district court upon the grounds that there had been no jurisdiction over respondent Woods whose official residence was in the District of Columbia; that no summons had ever been served upon him, nor had any process been delivered to or left at his usual place of abode; and that he was an indispensable party to the action.

ARGUMENT

The court below was manifestly right in holding that the district court had no jurisdiction over the person of the Housing Expediter, Tighe E. Woods, because no service of process had been effected upon him.

1. The applicable statute, 28 U.S.C. 1391(b), which is a codification of Section 51 of the Judicial Code (28 U.S.C. 112 (1946 ed.)), now re-

pealed,[2] plainly gives a defendant in a civil suit brought in a federal district court the privilege of being sued only in the judicial district of which he is a resident. That Section reads as follows:

> (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.

In the instant case, it is clear that respondent Woods has at no time since the institution of this suit been a resident of the State of Ohio. Section 206(e) of the Housing and Rent Act of 1947, as amended, infra, p. 9, provides that the principal office of the Housing Expediter shall be in the District of Columbia, and the affidavit filed by respondent Woods in support of the motion to dismiss states that his official residence has at all times since November 1, 1947, been in the District of Columbia, that his home is not in the State of Ohio, and that he is not an inhabitant of that State (R. 10).

It has long been held under Section 51 of the Judicial Code and its substantially similar prede-

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[2] The pertinent part of Section 51 of the Judicial Code before the codification of Title 28 read as follows:

> * * * no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant; * * *.

cessor statutes that, in the absence of a special statute to the contrary, a civil suit may not be maintained against a defendant without his consent in a federal district court except in the judicial district of which he is a resident at the time of the suit.[3] *Macon Grocery* v. *Atlantic Coast Line R.R. Co.*, 215 U. S. 501; *Male* v. *Atchison, etc. Ry. Co.*, 240 U.S. 97; *Robertson* v. *Labor Board*, 268 U.S. 619; *Neirbo Co.* v. *Bethlehem Corp.*, 308 U.S. 165, 168.

Section 51 of the Judicial Code made no distinction between a federal officer and a private person (nor does 28 U.S.C. 1391(b) make any such distinction), and both this Court and the lower federal courts have long held and recognized that Section 51 afforded the same protection to federal officers as it did to private persons. *Butterworth* v. *Hill*, 114 U.S. 128; *Berlinsky* v. *Woods*, 178 F. 2d 265 (C.A. 4) certiorari denied, 339 U.S. 949, rehearing denied, 339 U.S. 991; *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. 2d 97 (C.A. 5), certiorari denied, 299 U.S. 559; *Howard* v. *United States ex rel. Alexander*, 126 F. 2d 667 (C.A. 10), certiorari denied, 316 U.S. 699, rehearing denied, 317 U.S. 705; *Jewel Productions, Inc.* v. *Morgenthau*, 100 F. 2d 390 (C.A. 2);

[3] Rule 4(f) of the Federal Rules of Civil Procedure which outlines the territorial limits of effective service, provides that "All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. * * *"

Federal Landlords Committee, Inc., et al. v. *Woods, Housing Expediter* (S.D. N.Y., JJ. L. Hand, Leibell, and Ryan sitting) 9 F.R.D. 622.[4] *Berlinsky* v. *Woods, supra,* in which this Court recently denied the writ of certiorari, also involved a suit brought against the Housing Expediter in the wrong forum, and the primary question raised in that case was identical to the question presented here.

2. Petitioner asserts that the decision of the court below in refusing her the right to sue the Housing Expediter in the district where her property is situated, denied her due process of law, and that it also denied her judicial review by an independent judiciary. She does not, however, cite any authorities to support her assertions. Petitioner's contentions are plainly without merit. The decision of the court below does not deny her due process of law or a review by an independent judiciary, but merely postpones judicial review of whatever rights she has until she institutes her action in the proper tribunal. "Where only property rights are involved, mere postponement of the ultimate judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate." *Phillips* v.

[4] Section 206(c) of the Housing and Rent Act, *infra*, p. 9, is limited to suits brought by the United States or by tenants of controlled housing accomodations. It does not, therefore, apply to suits brought against the Housing Expediter. Cf. Rule 4(f) of the Federal Rules of Civil Procedure, *supra*, p. 6, footnote 3.

Commissioner, 283 U.S. 589, 596-597. And the review may be restricted to a particular tribunal, as long as it is adequate. *Yakus* v. *United States,* 321 U.S. 414, 437. Obviously, the United States district court for the district wherein respondent Woods, Housing Expediter, resides (in this case, the District of Columbia), is competent to grant petitioner an adequate remedy, if she has a right that has been infringed.

CONCLUSION

The decision of the court below is clearly correct and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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FEBRUARY 1951.

APPENDIX

The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, as amended by the Act of March 30, 1948, 62 Stat. 93, and by Pub. Law 31, 81st Cong., 1st Sess. (50 U. S. C. App., Supp. III, 1891 *et seq.*), read as follows:

Sec. 206. (c) Any proceeding brought in a Federal court under section 205 or under subsection (b) of this section may be brought in any district in which any part of any act or transaction constituting the violation occurred, or may be brought in the district in which the defendant resides or transacts business, and process in such case may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any such proceeding brought before it. No costs shall be assessed against the Housing Expediter or the United States Government in any proceeding under this Act.

* * * * *

(e) The principal office of the Housing Expediter shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place and attorneys appointed by the Housing Expediter may, under such authority as may be granted by the Attorney General, appear for and represent the United States in any case arising under this Act.

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